



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FOO - 175188

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 23, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS). The hearing was held on July 14, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is a household size of five effective December 1, 2015. In October and November 2015 the petitioner was a household of six.

2. On October 30, 2015 the agency sent the petitioner a notice stating that effective December 1, 2015 her monthly FoodShare (FS) benefits were decreasing from \$374 to \$289.
3. Effective July 1, 2016 the petitioner's monthly FS benefits are \$111.
4. The petitioner received child support payments from September through November 2015. The monthly average for these three months was \$95.19.
5. On June 23, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing. The petitioner seeks to contest her FS benefits for September, October, and November 2015.

### **DISCUSSION**

An appeal of a negative action concerning FS must be filed within 90 days of the negative action, once timely and adequate notice is given to the household. 7 C.F.R. § 273.15(g); see also Wis. Adm. Code §HA 3.05(3)(b). Failure to appeal within the 90-day limit means that the Division of Hearings and Appeals does not have jurisdiction to consider the merits of the appeal.

Here, the most recent notice of negative action is dated October 30, 2015. The Division of Hearings and Appeals did not receive the petitioner's Request for Fair Hearing until June 23, 2016. This is well beyond the 90 day time limit in which to appeal. The petitioner said that she not request a hearing because she did not understand until June 2016 why her FS benefits had decreased. There is no good cause exception for me to grant an extension. In addition, the petitioner could have contacted the agency in 2015 to determine why her FS benefits had decreased, and requested a hearing at that point.

The petitioner argues that the agency used an incorrect amount for her child support income in September, October, and November 2015. Although I have no jurisdiction, I note that the agency collects the child support payment information directly from the child support agency. The child support agency enters the information in a state wide computer program. The FS agency workers have access to this information. The petitioner has presented no documentation showing that this information was incorrect. Although the petitioner's appeal is untimely, and I am without jurisdiction, the petitioner's argument is not persuasive.

### **CONCLUSIONS OF LAW**

The petitioner's appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 26<sup>th</sup> day of July, 2016

\s \_\_\_\_\_  
Corinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 26, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability